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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 THE CONTINENTAL INSURANCE COMPANY,) Case No. 08-2052 SC
8 Plaintiff,)
9 v.) Related cases:
10 JOHN JOSEPH COTA; REGAL STONE,) 07-5800 SC
11 LIMITED, FLEET MANAGEMENT LTD.; and) 07-6045 SC
the M/V COSCO BUSAN, LR/IMO Ship) 07-5926 SC
12 No. 9231743, her engines, apparel,) 08-2268 SC
electronics, tackle, boats,
13 appurtenances, etc., in rem,)
Defendants.)
14 _____)
15)
16)
17 I. INTRODUCTION

18 This matter comes before the Court on the Motion to Stay
19 Civil Action Pending Resolution of Criminal Proceeding or,
20 Alternatively, to Compel Arbitration ("Motion"), filed by the
21 defendant John Joseph Cota ("Cota"). Docket No. 33. The
22 Continental Insurance Company ("Plaintiff" or "Continental")
23 submitted a Response, as did the defendants Regal Stone Limited
24 ("Regal Stone") and Fleet Management, Ltd. ("Fleet"). Docket Nos.
25 42, 43. Cota submitted a Reply. Docket No. 50. For the reasons
26 discussed below, Cota's Motion is GRANTED and the case is hereby
27 STAYED pending resolution of the criminal matter, United States v.
28 John J. Cota, Case No. CR 08-0160, now pending before the

1 Honorable Judge Illston.

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3 **II. BACKGROUND**

4 On November 7, 2007, the cargo ship COSCO BUSAN hit the Bay
5 Bridge while attempting to sail out of the San Francisco Bay. As
6 a result of this allision, the COSCO BUSAN discharged more than
7 50,000 gallons of heavy bunker fuel into the bay. Various
8 lawsuits have since been filed in state and federal court. The
9 four federal civil actions have been related and are before this
10 Court. See Chelsea v. Regal Stone, Ltd. et al., Case No. 07-5800;
11 Shogren Living Trust et al. v. Regal Stone, Ltd. et al., Case No.
12 07-5926; Continental Ins. Co. v. Cota et al., Case No. 08-2052;
13 California v. Regal Stone Ltd. et al., Case No. 08-2268. In
14 addition, the United States filed a criminal action against both
15 Cota and Fleet. See Cota, Case No. CR 08-0160.

16 Cota is a member of the San Francisco Bar Pilots ("Bar
17 Pilots") and was allegedly at the helm of the COSCO BUSAN when it
18 allided with the bridge.¹ First Am. Compl. ("FAC"), Docket No.
19 14, ¶ 21. Regal Stone owns the COSCO BUSAN and Fleet is the
20 ship's operator. Continental had issued an insurance policy to
21 the Bar Pilots, including Cota, that was in effect at the time of
22 the allision. FAC ¶¶ 11, 12. Because of this policy, Cota
23 tendered his defense in the criminal matter to Continental. Mot.
24 at 1. Although Continental initially refused to defend or
25

26 ¹ The San Francisco Bar Pilots is an association of
27 approximately 60 pilots authorized to pilot large vessels into and
out of the San Francisco Bay and its tributaries. Mot. at 3.

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1 indemnify him, it eventually agreed to do so in the criminal
2 proceedings, subject to a reservation of rights. Id. at 2. In
3 the civil matters, Cota initially tendered his defense to both
4 Continental and, pursuant to California Harbors and Navigation
5 Code § 1198(c), to Regal Stone and Fleet.² FAC ¶¶ 26, 27. Regal
6 Stone and Fleet initially declined to defend Cota, while
7 Continental accepted the obligation under a reservation of rights.
8 Id. ¶ 28. Several months later, Regal Stone and Fleet reversed
9 course and assumed Cota's defense in the civil actions, also under
10 a reservation of rights. Id. ¶ 30.

11 Continental subsequently filed the present action seeking
12 indemnity as to the civil defense costs against Regal Stone and
13 Fleet for the months during which Continental paid these costs.
14 Id. ¶ 31. According to Continental, these costs totaled
15 \$315,321.31. Id. In addition, Continental seeks declaratory
16 relief as to its obligations regarding the defense of Cota in the

² California Harbors and Navigation Code § 1198(c) states, in part:

Every vessel, owner, operator, or demise or bareboat charterer hiring a pilot with a state license for the Bays of San Francisco, San Pablo, and Suisun shall either defend, indemnify, and hold harmless pilots pursuant to paragraph (1), or alternatively, notify pilots of an intent to pay for trip insurance pursuant to paragraph (2). If a vessel or its owner, operator, or demise or bareboat charterer does not provide written notice pursuant to paragraph (2) of an intent to exercise the trip insurance option, then the vessel and its owner, operator, and demise or bareboat charterer will be deemed to have elected the obligation to defend, indemnify, and hold harmless pilots pursuant to paragraph (1).

1 criminal action; reimbursement of the criminal defense costs paid
2 for Cota; declaratory relief against all defendants; and indemnity
3 as to the criminal defense costs against Regal Stone and Fleet.
4 Id. ¶¶ 23-62. Regal Stone and Fleet filed a Counterclaim against
5 Continental, a Cross-Claim against Cota, and a Third-Party
6 Complaint against the Bar Pilots (collectively, "Counter
7 Complaint"). Docket No. 27. In the Counter Complaint, Regal
8 Stone and Fleet seek declaratory relief that the California
9 Harbors and Navigation Code § 1198(c) is preempted by federal law
10 or, in the alternative, that § 1198(c) does not require Regal
11 Stone and Fleet to indemnify Cota in the criminal action. Counter
12 Compl. ¶¶ 25-34. Regal Stone and Fleet also allege violations of
13 § 1198(a) by Cota and the Bar Pilots and seek by way of
14 declaratory relief a finding that Regal Stone and Fleet are not
15 obligated to indemnify Continental because of these alleged
16 violations.³ Id. ¶¶ 35-42.

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18 **III. LEGAL STANDARD**

19 Courts may, within their discretion, stay civil proceedings
20 "when the interests of justice seem to require such action."
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22 ³ California Harbors and Navigation Code § 1198(a) states:
23 Except as provided in subdivision (c), the
24 rates and charges for pilotage services
25 shall not include the cost of primary
26 marine insurance insuring a pilot, an
27 organization of pilots, or their officers
 or employees, from liability arising from
 negligence or errors in judgment in
 connection with the provision of pilotage
 service by pilots, organizations of
 pilots, or their officers or employees.

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1 Keating v. Office of Thrift Supervision, 45 F.3d 322, 324 (9th
2 Cir. 1995) (internal quotation marks and alterations omitted).
3 "The decision whether to stay civil proceedings in the face of a
4 parallel criminal proceeding should be made in light of the
5 particular circumstances and competing interests involved in the
6 case." Id. (internal quotation marks omitted). The first
7 consideration is "the extent to which the defendant's fifth
8 amendment rights are implicated." Id. (internal quotation marks
9 omitted). In addition, courts should generally consider the
10 following factors:

11 (1) the interest of the plaintiffs in
12 proceeding expeditiously . . . and the
13 potential prejudice to plaintiffs of a
14 delay; (2) the burden which any
15 particular aspect of the proceeding may
16 impose on defendants; (3) the convenience
17 of the court in the management of its
cases, and the efficient use of judicial
resources; (4) the interests of persons
not parties to the civil litigation; and
18 (5) the interest of the public in the
pending civil and criminal litigation.
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20 Id. at 324-25.

21 **IV. DISCUSSION**

22 As an initial matter, the Court notes that subsequent to the
23 filing of the instant Motion by Cota, Continental conceded that it
24 was required to submit its dispute with Cota to arbitration, as
25 mandated by the underlying insurance policy. See Continental's
Opp'n at 5. In light of this fact, Continental voluntarily
dismissed Cota from its lawsuit. See Docket No. 44. In addition,
Continental has indicated that, in the interest of judicial

1 economy, it does not oppose a stay of the action. Continental's
2 Opp'n at 6. Regal Stone and Fleet, however, continue to oppose
3 the stay and argue that it is overbroad and prejudicial to their
4 interests.

5 In applying the Keating factors to the circumstances of the
6 present case, the Court finds that a stay is warranted. It is
7 undisputed that all of the civil actions and the criminal action
8 spring from the same nucleus of facts--the allision of the COSCO
9 BUSAN with the Bay Bridge and the resulting oil spill.

10 Contrary to the argument presented by Regal Stone and Fleet,
11 resolution of their Counter Complaint against Cota will likely
12 involve resolution of issues that are pivotal the criminal action.
13 For example, in their Counter Complaint, Regal Stone and Fleet
14 seek "a determination by this Court that section 1198(c) does not
15 obligate [Regal Stone and Fleet] to defend, indemnify or hold
16 harmless Cota . . ." Counter Compl. ¶ 33. Section 1198(c)
17 releases insurers from the obligation to defend in "cases of
18 willful misconduct by a pilot." Cal. Harb. & Nav. Code §
19 1198(c)(1)(C). Thus, as their Cross Complaint makes clear, Regal
20 Stone and Fleet seek, in part, a determination that Cota engaged
21 in willful misconduct. It is difficult to imagine how
22 adjudication of this issue would not implicate many of the factual
23 issues underlying the criminal action. Accordingly, discovery
24 propounded on Cota in the underlying civil action will likely
25 implicate his fifth amendment rights. Although Regal Stone and
26 Fleet assert that they "do no presently believe discovery of Cota
27 is necessary to their anticipated motion for summary judgment,"

1 Regal Stone & Fleet Opp'n at 6, such a belief does not justify the
2 risk of prejudice Cota would face were he forced to proceed with
3 discovery at this time.

4 Finally, a stay of this case would not unduly prejudice Regal
5 Stone and Fleet. The only prejudice they have identified is a
6 delay in the determination of their responsibility to Cota's
7 defense. While delay is a relevant factor under Keating, the
8 possible prejudice Regal Stone and Fleet might suffer as a result
9 of this delay is not substantial and does not weigh heavily
10 against a stay. Furthermore, Fleet is a co-defendant with Cota in
11 the criminal action and, as Fleet concedes in its Opposition, is
12 now seeking to postpone the criminal trial from its current date
13 of November 17, 2008, to March 2009. Regal Stone & Fleet Opp'n at
14 7 n.5. Thus, some of the delay for which Regal Stone and Fleet
15 assert they will be prejudiced is in fact delay they are actively
16 pursuing in the criminal action.

17 The remaining Keating factors, to the extent they apply, also
18 favor a stay.

19

20 **V. CONCLUSION**

21 For the reasons discussed above, Cota's Motion to Stay Civil
22 Action Pending Resolution of Criminal Proceeding is GRANTED.

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24 IT IS SO ORDERED.

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Dated: September 18, 2008



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UNITED STATES DISTRICT JUDGE

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